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File No. City Police II/47

Legal **DEPARTMENT**

B **BRANCH**

Subject:—

Rules and Notifications under the City of Bombay Police Act, 1902.

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Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department File No. City Police XI/47.

Cr. No.	Compilation No.	Subject.	Pages.
		Rules & Notifns. under the City of Derby Police Act, 1922.	
(1)	O. No. 470 14/1/47.	Rules 4,5, & 8 — Amendments of	1.
(2)	O. No. 1157 3/1/47.	Sec. 46 D (3) (11) — Order under Sec. 27(2C) (111) (2) — Order under	3-10.
(3)	O. No. 1307 8/2/47.	——— ——Do———	11-16.
(4)	O. No. 167-contd. 17/4/47.	Sec. 27(2C) (111) (2) Four draft orders under	17-39.
(5)	O. No. 0670 6/3/47.	Sec. 23(2) (d) — Power of Commissioner of Police to regulate and control music or singing in any street or public place.	27-28.

Madhav Rookmins. 10/5/56.

15/5

K.S.R. 15/5

O/5.

Office of the R.L.A.

Preamble at pages 27 and 41. For the word "specifying" the word "prescribing" may be substituted.

Rule 4 at pages 28 and 41. For the last but one word "their" the word "his" may be substituted.

Rule 5 at pages 28 and 42. This rule relates to the discipline of the prisoner but no provision has been made therein regarding punishment of offences or breaches of discipline (cr. rule 16 of the Security ~~Detenus~~ Prisioners Detention Conditions Order, 1942). H. D. may consider whether rule 5 should be amended.

Rule 8 at page 28 and page 42. The form of application referred to in sub-rule (iv) at page 30, and at page 44 should be before the authentication by Secretary, H. D. at pages 30 and page 43 with the insertion of "(vide rule 8(iv)" as shown in pencil at page 30 and page 44.

The rule does not provide that the interview should take place in the presence of an officer attached to the place of detention and there is no provision for termination of the interview if the conversation is detrimental to the public interest or safety (cf rule 10(4) of the Security Prisoners Detention Conditions Order, 1942). It is presumed that such elaborate provisions are not considered necessary in this case as the detention of persons under these rules would be for a short period during emergency.

sd/- D.V.V.

Remembrancer of Legal Affairs.

U. O. to H. D. No. 420 dated the 14th January, 1947.

Madhav Naskodan. 10/5, c/4.

Home Department,

Bombay Castle, January 1947.

O R D E R.

Bombay District Police Act, 1890.

No. In exercise of the powers conferred by the first proviso to clause (ii) of sub-section (3) of section 46 B of the Bombay District Police Act, 1890 (Bom. IV of 1890), the Government of Bombay is pleased to authorise the District Magistrate,..... to detain the persons specified in the Schedule hereto appended beyond a period of two months, if he considers it necessary to do so.

SCHEDULE.

(Here mention names of persons detained)

By order of the Governor of Bombay,

Secretary to Government.

Madhav Rochtadan.
10/5.

c/4.

Home Department

Bombay Castle, January 1947.

City of Bombay Police Act, 1902.

O R D E R.

No. In exercise of the powers conferred by the first proviso to sub-clause (2) of clause (iii) of sub-section (2 c) of section 27 of the City of Bombay Police Act, 1902 (Bom. IV of 1902), the Government of Bombay is pleased to authorise the Commissioner of Police, Bombay, to detain the persons specified in the Schedule hereto appended beyond a period of two months, if he considers it necessary to do so.

SCHEDULE.

(Here mention names of persons detained)

By order of the Governor of Bombay,

Secretary to Government.

Madhav Rgohindan.
10/5/56.

c/4.

Office of the R.L.A.

These papers are referred to the R.L.A. for advice on the following four points, namely :-

(1) The exact form of the Order which should authorise the Commissioner of Police and the District Magistrates to detain persons beyond two months.

(2) Whether the Additional District Magistrate can pass detention orders.

(3) Whether there is any objection to adopt the course (regarding the procedure to be followed in regularising the detention of various persons.) suggested in the first part of the second para. of Secretary, H. D's note.

(4) If the course suggested in (3) above is not feasible, whether an immediate re-arrest can be made and whether a locus penitentiae should be given and, if so, how long.

2. As regards the first point, two draft model orders, one under section 46 B (3) of the Bombay District Police Act, 1890, and the other under section 27(2C) of the City of Bombay Police Act, 1902, are sent herewith.

3. The next point is whether orders under section 46B(3) cannot be made by the Additional District Magistrate, Ahmedabad.

4. Section 10(2) of the Criminal Procedure Code says that an Additional District Magistrate shall have all or any of the powers of a District Magistrate under the Code or under any other law for the time being in force as the Provincial G

Government may direct. I am not quite sure whether the wording used in the mkm order of 2nd July 1946. " and under any law for the time being in force" cufficiently meets the wording of section 10(2).

Yesterday Rockdam.

10/5/56-

c/4.

Since the intention is that the Additional District Magistrate is to exercise powers of the District Magistrate under all laws for the time being in force i.e. under any other law for the time being in force, the wording should have been " and under any other law for the time being in force". The Home Department is requested to re-issue the notification accordingly.

5. The next question is how the detention of the persons concerned should be regularised. The proposal made by Secretary, Home Department, is that the mandatory order of Government under the first proviso to clause ~~(i)~~ (ii) of sub-section (3) of section 46D of the District Police Act, should be cancelled, a fresh one made and the District Magistrate asked to issue fresh orders of detention under that authorisation in supersession of the previous orders. This proposal is not legally feasible. The order of Government having been held by the High Court to be bad, is of no effect, and itis not necessary to cancel it. Under the authority of the District Magistrate's order a person cannot be detained beyond a period of two months. If the period of detention has exceeded two months, the detenues will have to be set free immediately. In the case of detenues who have not been detained for that period it would be open to Government to make a fresh order authorising the District Magistrate to further detain them. But in the case of detenues of the former class it will not be possible to issue an order which will regularise their illegal detention and give retrospective effect to such an order.

6. The next question is whether the detenues can be re-arrested immediately on their release and the whole procedure started afresh.

The proposal to re-arrest the detenues immediately after their release also appears to be of doubtful legality. Sub-section (1) of section 46B of the Bombay District Police Act, 1890, empowers the Provincial Government to declare a proclamation of emergency if it is satisfied that the public peace or tranquillity in a district is disturbed etc. Under sub-section (3) of that section after such declaration, the Magistrate of the district, whenever it appears to him that the presence, movements or acts of any person in the district is or are causing or calculated to cause danger of alarm, or that a reasonable suspicion exists that designs calculated to disturb public peace or tranquillity are entertained by such person, can direct such person (1) as to conduct himself as the District Magistrate deems necessary or (2) to remove himself outside the Province or (3) can detain him for a period not exceeding 15 ~~xxx~~ days at a time. It appears from this provision that before a District Magistrate can pass any of the three orders referred to above, he has to satisfy himself that the presence, movements or acts of the persons are causing danger or alarm, etc. The persons ~~xx~~ who are detained in jail cannot have made any movements or acts which can be deemed to have caused such danger or alarm; nor can their presence in the jail be deemed to have to have caused such danger. Because of the restrictions while under detention, the detenues were not free agents. There would thus be no justifiable ground to re-arrest them immediately after their release and detain them. As observed by

Madhav Reshtadkar.
10/5.
c/~~x~~ 4.

Secretary, Home Department, a locus penitentiae (opportunity to repent) will have to be given. This may extended for such reasonable time as will enable their presence, movements or acts to be watched so as to satisfy the District Magistrate again that they should be detained.

sd/- D.V.V.

Secretary of Legal Affairs.

U. O. N. to Im.D. No. 1157, dated the 3rd February, 1947.

Madhav Rao Kadam.

10/9/56.

c/4.

Home Department,

Bombay Castle, 1937.

Bombay District
Police Act, 1890.

ORDER.

No. In exercise of the powers conferred by the first proviso to clause(ii) of sub-section (3) of section 40B of the Bombay District Police Act, 1890 (Bom. IV of 1890), the Government of Bombay is pleased to order that the total period of detention of the persons specified in the Schedule hereto directed to be detained by order of the District Magistrate

may, if the District Magistrate so directs, exceed two months."

SCHEDULE.

[Here mention names of persons detained)

By order of the Governor of Bombay,

Secretary to Government.

Vadhav Kaskadan.

10/5/56.

c/4.

Home Department,

Bombay Castle, February 1947.

City of Bombay Police Act, 1902.

No. In exercise of the powers conferred by the first proviso to sub-clause (2) of clause (iii) of sub-section (2C) of section 27 of the City of Bombay Police Act, 1902 (Bom. IV of 1902), the Government of Bombay is pleased to order that the total period of detention of the persons specified in the Schedule hereto directed to be detained by order of the Commissioner of Police, Bombay, may, if the Commissioner of Police so directs, exceed two months.

SCHEDULE.

(Here mention names of persons detained).

By order of the Governor of Bombay,

Secretary to Government.

Madhav Nachikar.
10/5.

Office of the H.L.A.

I have carefully examined the matter afresh in the light of the Home Department note at pages 15-17 ante.

Sub-section (3) of section 46 B of the Bombay District Police Act, 1890 and section 27 (2C) (iii) of the Bombay City Police Act, 1902 do not speak of the presence, movements or acts of a person at some time in the past, but speak of these in reference to the present. It would therefore seem that circumstances ought to exist, which would make it reasonably appear to the District Magistrate, at the time of passing the order, that the presence, movements or acts of the person concerned is or are causing or calculated to cause danger or alarm etc. etc. However, Home Department appears to have overlooked the second category of things mentioned in the provisions referred to above, which enable the Commissioner or the District Magistrate to pass an order of detention, namely that a reasonable suspicion exists that designs calculated to disturb public peace or tranquillity are entertained by the person who is to be detained. I should think such a reasonable suspicion the District Magistrate or the Commissioner is bound to have in respect of persons referred to at B of Home Department note at page 16. The Commissioner or the District Magistrate would therefore be fully justified in passing an order of detention and re-arresting such persons immediately after their release.

2. As regards the form of the orders as already stated on the previous occasion the substantial provision of directing detention of a person rests in the District Magistrate or the Commissioner. This power he cannot exercise if he wants to detain a person beyond a period of 3 months. The first proviso to ~~xxx~~ clause (ii) of sub-

section (3) of section 46 B of the District Police Act,

and to clause (2) of sub-section 2C(iii)

Madhav Raokadam.

10/5.

c/4.

of section 27 of the City Police Act empowers the Provincial Government to authorise the District Magistrate or the Commissioner to extend the order of detention of any particular person beyond two months. The statement made by Secretary H. D. that the District Magistrate or t e Commissioner is not empowered to direct detention beyond two months except by virtue of this authorisation is perfectly correct. But the fact that the main power to detain under the substantial provision of law vest in the Commissioner or the District Magistrate upto two months, and when authorised by the Provincial Government by an order under the proviso, beyond two months is also to be taken into consideration.

The word " direct" in the expression " if the District Magistrate so directs" and " if the Commissioner of Police so directs" in the two drafts supplied at pages 11 and 13 ante is therefore perfectly correct and I do not think that the High Court will object to this.

Sd/- D.V.V.

Remembrancer of Legal Affairs.

U. O. to H. D. No. 1307 dated the 5th February 1947.

Madhav Reddiar.
10/5.
c/4.

Office of the R.L.A.

In place of the Home Department draft orders at pages 103-109 ante, four revised draft model orders are sent herewith. As it is not necessary for the Commissioner of Police under section 27 (2C) (iii) (2) of the City of Bombay Police Act, 1902, to specify in the order the grounds or facts on which he considers that a person should be detained, reference to the same has been omitted in the revised forms of orders. Under clause (iv) of sub-section (2C) of section 27 of the said Act the grounds on which the order of detention is made, are to be communicated to the Government of Bombay, while submitting a copy of the order.

Sd/- D.V.V.

Remembrancer of Legal Affairs.

U. R. to H. D. (spl.) No. 167-confl. dated the 17th April, 1947.

Madhav Rajkotdar.

10/5/56.

c/43

Whereas by a proclamation made under clause (1) of sub-section (2C) of section 27 of the City of Bombay Police Act, 1902 (Bom.IV of 1902), and published in the Bombay Government Gazette dated the ...., the Government of Bombay has declared that an emergency exists in the Greater Bombay;

And whereas it appears to me that the a

presence/movements/ or acts of .....
reasonable suspicion exists that designs

is or are causing or calculated to cause danger or calculated to disturb public peace or tranquillity

alarm ..... and I .....Commissioner are entertained by .....

of Police, Bombay, in exercise of the powers conferred by sub-clause (2) of clause (iii) of sub-section (2C) of section 27 of the said City of Bombay Police Act, 1902 (Bom. IV of 1902), hereby direct that the said..... ..... be detained in jail for a period of .....3..... from the date of this order.

O Score out whichever is not applicable.

Here specify name/names of persons.

5 Here specify period not exceeding 15 ~~xxxxx~~ days.

Head Police Office
Bombay
Dated

Commissioner of Police,
Bombay.

Madhav Mahadeo.
10/5. c/4.

Whereas by my Order No.....dated the .....the person/persons mentioned below has/ have been detained in jail for a period of .....days with effect from..... .....;

Score out whichever is not applicable.

And whereas for the reasons specified in the said Order, it appears to me that the said person/persons should be further detained for a period of..@..... .....days; I.....Commissioner of Police, Bombay, hereby direct in exercise of the powers conferred by sub-clause (2) of clause (iii) of sub-section (20) of section 27 of the City of Bombay Police Act, 1902 (Bom. IV of 1902), that the said person/persons befurther detained in jail for a period of .....$..... days with effect from ....

@ Here specify period not exceeding 15 days.

$ Here specify period not exceeding 15days, but not exceeding a total period of 2 months.

(Here mention name/s of person/s detained)

Head Police Office
Bombay
Dated.

Commissioner of Police,
Bombay.

Madhav Baokadam.
11/5.
c/5.

Home Department,

Bombay Castle, 1947.

O R D E R.

City of Bombay Police Act, 1902.

No. . In exercise of the powers conferred by the first proviso to sub-clause (2) of clause (iii) of sub-section (2C) of section 27 of the City of Bombay Police Act, 1902 (Bom IV of 1902), the Government of Bombay is pleased to order that the total period of detention of the person/persons specified in the schedule hereto directed to be detained by order of the Commissioner of Police, Bombay, may, if the Commissioner of Police so directs, exceed two months.

Schedule

(Here mention name/names of person/s detained)

By order of the Governor of Bombay,

Secretary to Government.

Madhav Mankadkar.
11/5.
6/5.

Whereas by my Order Nos ..... dated the

..... the person mentioned below has/have

Score out whichever is not applicable.

been detained in jail for a total period of two

months;

And whereas by their Order No .....

dated the ..... the Government of Bombay

have directed that the total period of ~~detention~~ ~~this~~

detention of the said person/persons may exceed two months;

And whereas for the reason/reasons specified in

my Order No..... dated the.....

..... it appears to me that the said person/persons

Here specify period not exceeding 15 days.

should be further detained for a period of ---2---

..... I ....., Commissioner of Police,

Bombay, in exercise of the powers conferred by

sub-clause (2) of clause (iii) of sub-section (2C)

of section 27 of the City of Bombay Police Act,

1902 (Bom. IV of 1902), hereby direct that the said

person/persons be further detained in jail for a period

of .....2..... days from.....

.....

(here mention names/s of person/s detained)

Head Police Office
Bombay
Dated

Commissioner of Police,
Bombay.

Madhav Raokadam.
11/5. c/5.

Office of the R.L.A.

In my opinion it is possible to achieve the object in view both under the Bombay District Police Act, 1890, and under the Bombay City Police Act, 1902. of course, the provision contained in section 61(1) (h) of the District Police Act is clear and leaves no room for doubt. The provisions contained in section 23(1) (e) and particularly those contained in section 23(2) (d) and (e) of the City Police Act are also wide enough for achieving the purpose in view in so far as Greater Bombay is conerned. Section 23(1) (e) empowers the Commissioner of Police, or the officer mentioned therein, to give orders such as may be necessary to regulate and control music or singing in any street or public place. Under section 23(2) (d) the Commissioner of Police is empowered for the purposes mentioned in the said section to prohibit the public unterances of cries singing of songs and playing of music. Under section 23(2) (e), the Commissioner of Police has the power to prohibit the delivery of harangues, the use of gestures, or mimetic representations and the preparation, exhibition, or dissamination of pictur symbols, placards or of any other object or thing which may be of a nature of outraging morality or decency, or which in the opinion of the Commissioner of Police, may probably inflame religious animosity or hostility between different classes or incite to the commission of an offence, to a disturbance of the public peace or to resistance to or contempt of the law or a lawful authority. A breach of any of the orders issued under section 23 is an offence under section 127. The power to prohibit contained in section 23(2) (d) and (e) would, in my opinion, include a power to prohibit except under a license

with particular conditions. The view taken by Secretary, H. D., at pegae 8, that the object in view ~~of~~ can be achieved under the existing provisions of the two Acts, is correct.

sd/- D.V.V.

Remembrancer of Legal Affairs.

U. R. to H. D. (Political), No. 8070, dated the 6th August 1947.

Madhav Rockadem.
11/5.

c/5.